IN THE

Supreme Court of the United States.

S. R. COCKRILL, Receiver of the First National Bank of Little Rock, Ark.....Plaintiff in Error,

v.

UNITED STATES NATIONAL BANK OF NEW YORK.....Defendant in Error.

Brief for Defendant in Error in Reply on Motion to Dismiss.

This action is not against the receiver as the sole defendant. The complaint is against both the First National Bank and the receiver. While no service was had against the bank, its appearance was entered after the receiver answered, and it, with the receiver, filed an amendment to the answer previously filed by the receiver, as follows:

"In the United States Circuit Court, Western Division of the Eastern District of Arkansas.

AMENDMENT TO ANSWER.

United States National Bank,

v.

First National Bank *et al.*

By way of amendment to the answer filed heretofore herein,

defendants allege that the name of the defendant bank was endorsed on said notes by H. G. Allis for his personal benefit without authority from said bank; that said Allis, assuming to act for defendant bank, procured the plaintiff to advance or loan upon said notes a large sum of money which he appropriated to his own use; that said Allis had no authority from said bank to negotiate said loan or to act for it in any way in said transaction; if said transaction created an indebtedness against the defendant bank, then the total liability of the defendant bank to the plaintiff by virtue thereof, exceeded one-tenth of the plaintiff's capital stock, and the total liability of the defendant bank thereby exceeded the amount of its capital stock actually paid in; that the plaintiff knowingly permitted its officers to make such excessive loan under the circumstances aforesaid; that the transaction aforesaid was not in the usual course of banking business, which either the plaintiff or the defendant bank was authorized to carry on; that the plaintiff is not an innocent holder of either of said notes; that the defendant bank received no benefit from said transaction; that it had no knowledge thereof until a few days prior to its suspension; that no notice of the dishonor of said notes was ever given to the defendant bank.

Wherefore it prays as in its other answers filed herein.

S. R. COCKRILL,
ASHLEY COCKRILL,
For Defendant."

The record also shows the following orders in the case:

"On May 26, 1896.

United States National Bank of the City of New York,

v.

First National Bank of Little Rock, and S. R. Cockrill, Receiver.

Comes the plaintiff, by Ratcliffe & Fletcher, Esqrs., its attorneys, and files herein its motion to strike from the files the amendment to the answer, and also demurrer to the said amendment, and come the said defendants, by S. R. Cockrill and John McClure, Esqrs., their attorneys, and said motion to strike and demurrer are heard, argued and submitted to the court, and the court being well and sufficiently advised in the premises, considers that the same be overruled, to which ruling of the court the plaintiff, by its attorneys, excepted.

And both parties announcing themselves ready for trial, a jury came, to-wit: C. T. Young, F. M. Adams, J. M. Palmer, H. C. Philips, A. D. Billings, L. C. O'Barr, Henry H. McCray, Elisha Ives, W. P. Hunter, E. S. Ellis, G. W. Wagnon, and William Williams, being twelve good and lawful men of the district, who were duly tried, empanelled and sworn well and truly to try the issues joined between the plaintiff and the defendant, and a true verdict give according to the law and the evidence, and thereupon the jury proceed to hear the evidence as well on the part of the plaintiff as of the defendants, and the trial thereof not being concluded the same continued until to-morrow morning at 10 o'clock."

"May 27, 1896.

United States National Bank of the City of New York,

v.

First National Bank of Little Rock, and S. R. Cockrill, Receiver.

Comes the plaintiff, by Ratcliffe & Fletcher, Esqrs., its attorneys, and comes the defendants, by S. R. Cockrill and John McClure, Esqrs., their attorneys, and comes the jury, to-wit: C. T. Young, F. M. Adams, J. M. Palmer, H. C. Philips, A. D. Billings, L. C. O'Barr, Henry H. McCray, Elisha Ives, W. P. Hunter, E. S. Ellis, G. W. Wagnon, and William Williams, and the trial hereof not being concluded on yesterday, the same is now resumed and the jury having heard all the evidence and argument of counsel and having been charged and instructed by the court, retired to consult of their verdict."

"And on May 28, 1896.

United States National Bank of the City of New York,

v.

First National Bank of Little Rock, and S. R. Cockrill, Receiver.

Comes the plaintiff, by Ratcliffe & Fletcher, Esqrs., its attorneys, and comes the defendants, by S. R. Cockrill and John McClure, Esqrs., their attorneys, and comes the jury, to-wit: C. T. Young, F. M. Adams, J. M. Palmer, H. C. Philips, A. D. Billings, L. C. O'Barr, Henry H. McCray, Elisha Ives, W. P. Hunter, E. S. Ellis, G. W. Wagnon, and William Williams, and return into court the following verdict: We, the jury, find the issues for the defendant. W. P. Hunter, Foreman.

It is therefore considered, ordered and adjudged that said plaintiff take nothing by its said writ, but be in mercy for its

false complaint, and that the defendants have and recover of and from the said plaintiff all their costs herein expended and have execution therefor."

The cases relied on by plaintiff in error to sustain the jurisdiction of this court are:

1. Where a corporation formed under the act of Congress, or an officer, or receiver, acting under authority of the United States statutes, or United States courts, had in the exercise of the powers and duties granted thereby incurred the liability for which the suit was brought, as in the Pacific Renewal Cases, 115 U. S., 1; Bock *v.* Perkins, 138 U. S., 628, and McNutta *v.* Lochridge, 141 U. S., 327.

2. Where a suit was brought against the receiver for the property held by him, or for preference, as in Hot Springs District *v.* First National Bank, 61 Fed. Rep., 417.

The case at bar is clearly distinguishable from either class of these cases. The liability on which this action was brought was in no way incurred by the receiver, but was occasioned solely by the First National Bank. No preference is sought. The action might have been maintained against the First National Bank alone, and a judgment against the bank would have been binding on the receiver.

Denton *v.* Baker, 79 Fed. Rep., 189, 194.

The suit is simply for the purpose of establishing the validity of the claim against the First National Bank, and had the receiver not been made a party he would no doubt have intervened and defended for the bank. To avoid the delay on this account he was made a party in the first instance. There is nothing in

that which raises a Federal question. As said by this court in Bank of Bethel *v.* Pahquioque Bank, 14 Wall., 402: "Claims presented by creditors may be proved before the receiver, or they may be put in suit in any court of competent jurisdiction, *as a means of establishing their validity, and to determine the amount owed by the association.*"

The receiver is simply a *party*—proper but not necessary party. He is not the *cause* of the action.

Had he not been sued in the first instance with the bank, and had he intervened afterwards there would have been no jurisdiction.

Wichita National Bank *v.* Smith, 72 Fed. Rep., 568.

The mere fact that he was sued with the bank can give him no greater rights than the bank. He simply defended for the bank, and at last was a mere substitute for it.

The fact that he was made a party raised no other question than could have been raised if the bank alone had been sued.

Respectfully submitted,

W. C. RATCLIFFE,
JOHN FLETCHER,
For Defendant in Error.